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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 561

CHARLES HENRY BEAVER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (R. 80–93; Pet. App. 12–24) is not yet reported. The opinion of the district court (R. 33–35) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 3, 1962 (R. 80, 94; Pet. App. 12, 24). The petition for a writ of certiorari was filed on October 26, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the local draft board properly refused to reopen petitioner's classification for the purpose of

considering new material—petitioner's conversion to Jehovah's Witnesses and his conscientious objection to the participation in war in any form—submitted by the petitioner after he had received notice to report for induction into the armed forces.

STATUTES AND REGULATIONS INVOLVED

Section 460(b) of 50 U.S.C. App. provides in pertinent part:

> The President is authorized—
>
> (1) to prescribe the necessary rules and regulations to carry out the provisions of this title * * *.

Section 456(j) of 50 U.S.C. App. provides in pertinent part:

> Nothing contained in this title * * * shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. * * *

Selective Service Regulation 1625.1(b), 32 C.F.R. 1625.1 provides:

> Each classified registrant * * * shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, military, or dependency status, or in his physical condition. * * *

Selective Service Regulation 1625.2, 32 C.F.R. 1625.2 provides in pertinent part:

> The local board may reopen and consider anew the classification of a registrant (a) upon the written request of the registrant * * * if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (b) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction * * * unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

STATEMENT

An indictment returned in the United States District Court for the Eastern District of North Carolina charged that, on October 2, 1959, petitioner willfully refused to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462(a) (R. 2). After a trial to the court, a jury trial having been waived, petitioner was convicted and sentenced to imprisonment for two years (R. 3, 34–35). The conviction was affirmed on appeal, one judge dissenting (R. 80–93, 94; Pet. App. 12–24).

The pertinent facts may be summarized as follows:

In 1957, petitioner registered for the draft with local board No. 39 in Oxford, North Carolina. Peti-

tioner did not fill out the conscientious objector portion of his questionnaire and indicated that the ministerial section did not apply to him (R. 35–36). Shortly thereafter, he was classified 1–A for military training and service (R. 37).

In May 1958, the local board mailed to the petitioner a current information form in order to bring his file up to date (R. 17–18, 40–41). Petitioner in his reply did not indicate any conscientious objection to military training. He gave his address as Burlington, North Carolina (R. 17–18, 23, 40–41).

In July 1958, after the petitioner had reported for an armed forces physical examination, he was found acceptable for induction into the armed services (R. 41–42). In December 1958, petitioner moved to Gibsonville, North Carolina, without notifying his local board of that fact (R. 20, 23, 73).[1]

On August 12, 1959, the local board mailed to the petitioner at his Burlington, North Carolina, address another request for current information (R. 13, 17, 18, 46–47). Petitioner was requested to complete the form and return it to the local board on or before August 22, 1959 (R. 18, 46). On August 25, 1959, the local board, having received no reply from the petitioner, ordered him to report for induction into the armed forces on September 9, 1959 (R. 7, 14, 18, 43). 43).

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[1] Selective Service Regulation 1641.3, 32 C.F.R. 1641.3 requires each registrant to keep his local board advised of his current address. Petitioner admitted that he was aware of this duty, and had informed the board of changes of address in the past (R. 68, 69, 70).

After the petitioner had received the notice to report for induction, also mailed to his Burlington address, he forwarded to the local board the completed form reflecting current information, together with a letter and an affidavit from a minister of Jehovah's Witnesses (R. 8–9, 14, 19–20, 44–47). Petitioner stated that he was a minister of Jehovah's Witnesses but had not realized that he should have notified the board of that fact (R. 45; see R. 13, 14, 47). He now requested the board to reopen his classification and to grant him a personal appearance before the board (R. 44–45). The affidavit of the minister of Jehovah's Witnesses recited that the petitioner had enrolled in the Theocratic Minister School of the Watchtower Bible and Tract Society in March 1959; that he conducted Bible studies in homes and was active in all phases of field service preaching work; and that he was recognized as an ordained minister by the Watchtower Bible and Tract Society (R. 45–46). All of this information—the completed current information form, petitioner's letter, and the affidavit from the minister of Jehovah's Witnesses, was received by the local board on September 2, 1959 (R. 14, 23, 73).[2]

After consulting the State Director of Selective Service, the local board postponed petitioner's induction until the October call and furnished him with

[2] Petitioner dated the completed form for current information August 23, 1959 (R. 47). His letter to the board was dated August 30, 1959, and the affidavit was dated August 31, 1959 (R. 44, 45, 46). The postmarks on the envelope indicated that the material sent to the local board was mailed from Gibsonville, North Carolina, on August 31, 1959 (R. 44).

the special form for conscientious objectors (R. 37, 48, 49, 50–51, 70). The board letter recited, in part (R. 51):

> The postponement was granted in order for the Board to consider your case at the next board meeting. You will be advised after said meeting if your case is to be reopened. If the Board reopens your case, you will then have the right to personal appearance and appeal. If the case is not reopened, you will be expected to report for induction with our October call.

Petitioner completed the special form for conscientious objectors and returned it to the local board (R. 52–57). In that form, petitioner said that his religious beliefs which formed the basis for his conscientious objection to participation in war resulted from private study, congregational meetings of Jehovah's Witnesses and the Theocratic Ministry School "from the latter part of 1957 until now"; that he became a member of the Watchtower Bible and Tract Society at the time of his ordination on May 9, 1959; and that he was conducting Bible studies and performing ministerial work from home to home (R. 52–57).

On September 19, 1959, the local board, by a 3–0 vote, determined "that the evidence submitted by the registrant after the date of issuance of his Order to Report for Induction is not evidence of a change in status resulting from circumstances over which he had no control" (R. 15–16, 37). On the same day, the board ordered the petitioner to report for induction on October 1, 1959 (R. 10, 16, 58–59).

Petitioner reported to the induction center on October 1, 1959, but refused to submit to induction into the armed forces (R. 60, 61–64). In denying petitioner's motion for judgment of acquittal, the court held that the petitioner had waived his right to have the classification reopened since he did not notify the board of his change of status within ten days of such change as required by Selective Service Regulation 1625.1; and that the board's action in refusing to reopen his classification after notice of induction had been mailed was not arbitrary or capricious (R. 34).

ARGUMENT

This case does not involve the question whether belated acquisition of conscientious scruples against participation in war entitles a registrant to exemption. The only question presented is whether one who claims timely conversion, but then delays notifying the board of his objection until after receiving a notice to report for induction, is entitled to have his classification reopened and considered anew.

In the instant case, petitioner had ample time before issuance and receipt of the induction notice to inform the local board of his change in status. In his conscientious objector form, submitted after receipt of the notice to report, petitioner stated that he had acquired the religious beliefs upon which he based his claim for exemption as a result of private study and congregational meetings with Jehovah's Witnesses "from the latter part of 1957 until now" (R. 52–57). Yet, in May of 1958, when he returned to the board the current-information questionnaire, he did not indicate any religious beliefs or conscien-

tious scruples which would affect his willingness to participate in war (R. 17, 18, 23, 40–41). He dated his induction into the ministry from May 1959, more than three months before his induction notice, but did not inform the board of his affiliation and his scruples until September 1959. His attempt to have his classification reopened after receipt of the induction notice came too late.[5]

Selective Service Regulation 1625.2, *supra*, permits local boards, in their discretion, to reopen classifications *prior* to the issuance of induction notices or orders to report for civilian work, but specifically denies them authority to reopen *after* an induction notice has been issued unless the board finds that the registrant's change in status resulted from circumstances over which he had no control. This is a reasonable regulation in relation to a system designed to permit rapid mobilization—one which depends in large part on the cooperation of registrants in furnishing information. Its validity has repeatedly been upheld by all of the courts of appeals which have had occasion to consider the problem. *Keene* v. *United States*, 266 F. 2d 378, 383 (C.A. 10); *Boyd* v. *United States*, 269 F. 2d 607, 611 (C.A. 9); *Feuer* v. *United States*, 208 F. 2d 719, 721 (C.A. 9);

[5] The notice to supply current information was sent to the petitioner's Burlington address on August 12, 1959. According to petitioner, he did not receive that notice until more than 10 days later, after August 22, 1959. On the other hand, the notice to report for induction was mailed to petitioner's Burlington address on August 25, 1959, and petitioner's letter to the board in response to that notice was dated August 30, 1959 (R. 44), indicating that he received the notice to report in five days or less.

United States v. *Schoebel*, 201 F. 2d 31, 32–33 (C.A. 7). See also, *United States* v. *Mohammed*, 288 F. 2d 236, 243 (C.A. 7), certiorari denied, 368 U.S. 820; *Lemien* v. *United States*, 158 F. 2d 550, 552 (C.A. 5). There is no conflict of circuits on this issue.[4] The district court cases to the contrary (*United States* v. *Underwood*, 151 F. Supp. 874, 876 (E.D. Pa.); *United States* v. *Brown*, 129 F. Supp. 237, 238–239 (D. N.J.)),[5] are based on a rigid interpretation of the conscientious objector exemption in the Act (50 U.S.C. App. 456(j), *supra*), unfettered by any procedural or time limitations imposed by the Selective Service regulations. This view ignores the practical necessity of foreclosing last minute claims of change in status in order to achieve the purposes of the Universal Military Training and Service Act. Registrants who claim exemption can reasonably be held to making their claims in timely and orderly fashion.[6]

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[4] *United States* v. *Vincelli*, 215 F. 2d 210, 216 F. 2d 681 (C.A. 2), and *Schuman* v. *United States*, 208 F. 2d 801 (C.A. 9), upon which petitioner relies to show a conflict in the circuits (see Pet. 8), and *Townsend* v. *Zimmerman*, 237 F. 2d 376 (C.A. 6), do not involve this question. There the local board refused, *prior* to the issuance of an order to report for induction, to reopen a classification.

[5] *United States* v. *Crawford*, 119 F. Supp. 729 (N.D. Cal.), indicating the same view, is contrary to the decisions of the court of appeals for the Ninth Circuit cited in the text.

[6] The dissenting judge was of the opinion that Selective Service Regulation 1625.2 had no application to the instant facts because petitioner's application for reopening was before the board at a time when there was no outstanding order to report for induction, the order of August 25 having been revoked (see Pet. App. 22) The short answer to this, however, is that the board did not revoke the August 25 order; it merely postponed the date for petitioner's induction (R. 51). Selective Service Regulation 1632.2(d), 32 C.F.R. 1632.2(d), provides

Petitioner contends without argument (Pet. 2, 11) that the mailing to him by the local board of the special form for conscientious objectors (SSS Form 150) constituted a reopening of the classification, and that the local board denied him procedural due process in failing to hear his claim. The fact is, however, that the mailing to the petitioner of the SSS Form 150 did not operate to reopen the classification. *Boyd* v. *United States, supra,* 269 F. 2d at 610; see *Feuer* v. *United States, supra,* 208 F. 2d at 721; *United States* v. *Monroe,* 150 F. Supp. 785, 789 (S.D. Cal.). The completed SSS Form 150 assisted the board in its duty of determining, on the basis of petitioner's entire Selective Service file, whether the change in petitioner's status resulted from circumstances over which he had no control—an affirmative finding which is a prerequisite to the reopening of a classification after an induction notice has been mailed.[7]

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that the postponement of induction does not invalidate an outstanding order to report for induction or require the issuance of a new order to report for induction.

[7] In his Statement, petitioner complains (Pet. 7) that an "unknown source" caused to be placed in his Selective Service file the September 1959 Selective Service Bulletin which reported upon the *Keene* case, *supra*, "which was adverse to petitioner and done without notice to him." But, as the court of appeals correctly pointed out (R. 87; Pet. App. 20), "The decision and the bulletin were public records, of which the board and the appellant both could—and should—take notice." Moreover, Selective Service Regulation 1606.21(a), 32 C.F.R. 1606.21(a), provides that, in addition to other materials, the local boards shall "be required to keep up, day by day, * * * memoranda, changes, and all other pertinent information published by the Director of Selective Service." Petitioner does not complain that the local board denied him opportunities to examine his Selective Service file.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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